

ACQUISITION REFORM TRAINING MODULE

Implementing Cost /Price & Past Performance Changes

- New Rules in Cost & Price Analysis
- New Rules in Cost & Price Analysis Exercise
- **Past Performance Data - Evaluation and Recording**
- Past Performance Data - Evaluation and Recording Exercise

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Past Performance Evaluation

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Welcome to Past Performance Data - Evaluation and Recording.

This lecture outlines various changes to the contracting process brought about by the new FAR rules concerning the recording and evaluation of past performance data.

Its purpose is to illustrate the processes for acquiring and evaluating past performance data.

It also illustrates aspects of Acquisition Reform Guiding Principle #8, procure goods and services with best value techniques.

It is followed by a practical exercise that reinforces the major learning points.



There was no specific FAR case on past performance. However, the language of FAC 90-26, Past Performance Information, implements Section 1091 of FASA 94. It shows up throughout the new FAR revisions and is an integral part of many of the acquisition reform initiatives.

The use of past performance as an evaluation tool is not new. What is new is the increased emphasis on the use of past performance in the evaluation process.

As we will discover, it is a mandatory evaluation factor in negotiated solicitations over \$100,000.

We will also discuss the new requirement to record evaluations of past performance information and to make that information available to other agencies.

Concerning new skills required, the contracting officer, the technical community, and the user all have to learn the most effective and useful way to rate a contractor's performance and how best to capture that information for all contracts.

Why Past Performance?

- **Integral to best value selections**
- **Impacts quality of future work**
- **Incentivizes contractors to strive for excellence**
- **Reduces risk and need for oversight**



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There are significant benefits to be reaped by the acquisition community. Thanks to these changes, the use of past performance as an evaluation factor makes contract awards “best value” selections and enables agencies to better predict the quality of, and customer satisfaction with, future work.

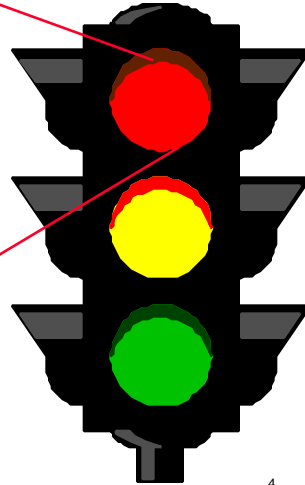
This process incentivizes industry to strive for excellence and encourages contractors to deliver the same high quality service to the Government as is provided to their commercial customers.

Dealing with proven performers reduces risk, thereby reducing the need for government oversight. This translates into significant personnel and dollar savings that can be applied to other parts of the acquisition process.

Industry also benefits from reduced oversight. It means that their redundant oversight organizations can be reduced or abolished. Any reduction in administrative burden translates into lower costs.

Criticisms

- **Past performance and quality certifications are not perfect predictors.**
- **Past performance and quality certifications do not always apply.**



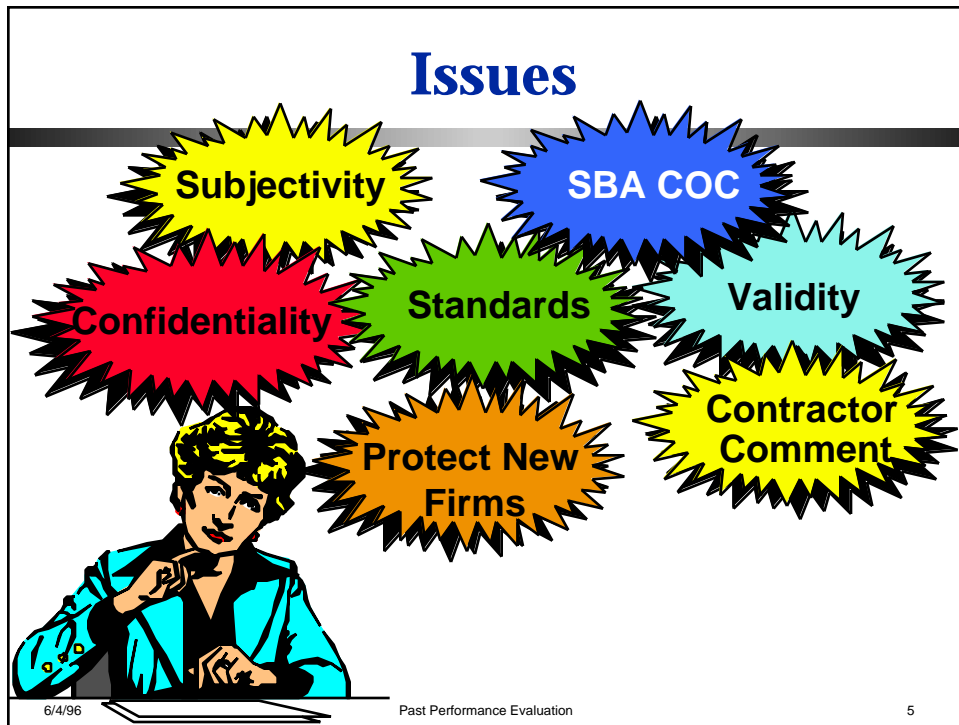
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These are two common criticisms advanced by some government contracting officers. The first criticism is that nothing is perfect. However, past performance is currently being used informally by government contracting officers, and formally by most large private sector purchasers. It works! Whenever possible, contracting officers should use this tool to buy best value items.

Second, while past performance may not always apply, it should be used when it does apply.



When this rule was published for public comment, industry representatives raised some significant concerns. Some of them are:

- How long would the information remain valid?
- Will contractors have the opportunity to comment on their ratings?
- How will new firms with no past performance history be protected?
- Will ratings be subjective?
- Will standards be developed?
- How will the Government protect the confidentiality of the data?
- Will a COC be used by the SBA to protect small businesses with poor performance histories?

This lesson will illustrate how the final guidance addressed these issues.

Policy Requirements

- *FASA*
- *FAC 90-26*
- *OFPP Guide*
- *OFPP 92-5*
- *Agency Implementation*



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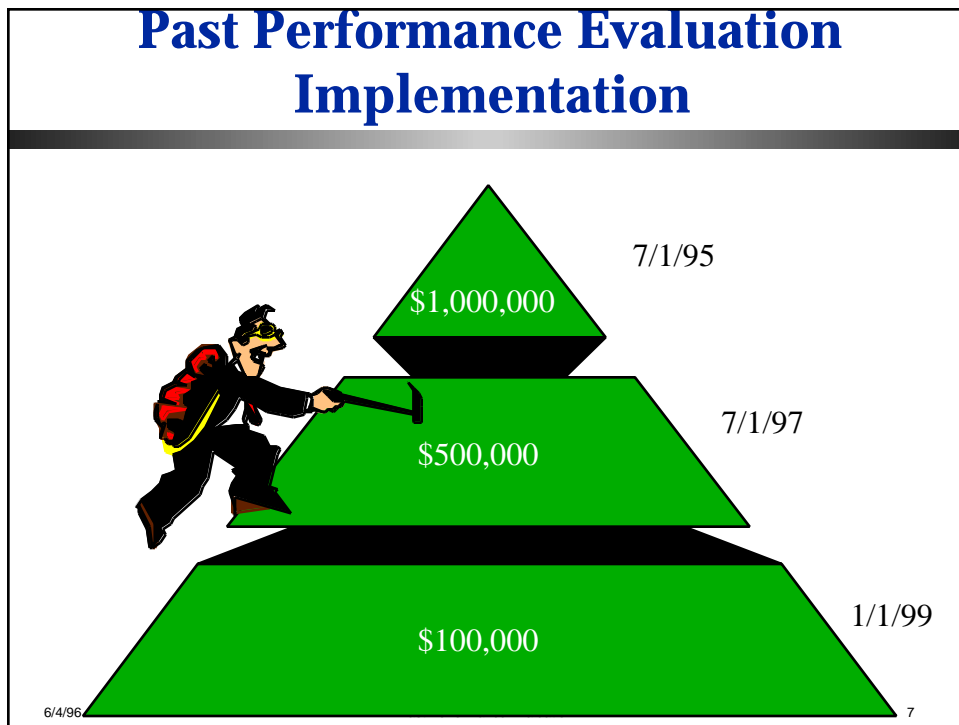
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The regulatory guidance for the use of past performance information is the FAR. The appropriate language appeared in FAC 90-26.

The OFPP Guide to Best Practices for Past Performance contains suggested best practices for implementing OFPP Policy Letter No, 92-5, Past Performance Information.

Agencies will further implement these changes by publishing agency policy guidance.



The FAR requires that past performance be evaluated in all competitively negotiated acquisitions expected to exceed \$100,000 not later than January 1, 1999, unless the contracting officer documents in the contracting file why past performance should not be evaluated.

Agencies may develop their own phase-in schedule which meets or exceeds the following milestones:

Evaluation of past performance will take place in all solicitations in excess of:

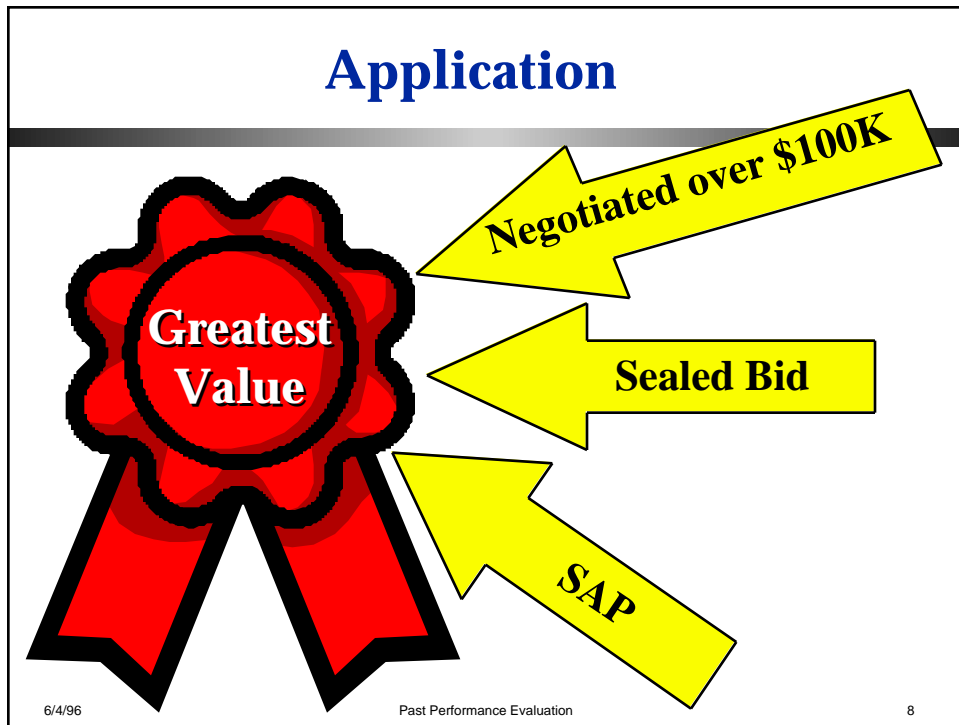
- \$1M issued after July 1, 1995.
- \$500,000 issued after July 1, 1997.
- \$100,000 issued after January 1, 1999.

Past performance may be evaluated in competitively negotiated acquisitions estimated at \$100,000 or below at the discretion of the contracting officer.

NOTE: DoD wants to accelerate \$500,000 to July 1, 1996, \$100,000 to July 1, 1997.

(Federal Register, November 17, 1995)

(15.605)



The major application of the use of past performance is in negotiated contracts in excess of \$100,000.

However, poor performance can be a reason for a negative responsibility determination in the sealed bidding process.

Also, individuals making simplified purchases consider vendor past performance when making purchase decisions.

NOTE: DoD encourages use of past performance under \$100,000, proposed DFARS Rule in the Federal Register, November 17, 1995.

FAR (9.104-1), (14.404-2), (13.106-1(a)(1))

Responsibility Vs. Evaluation Factor

Past performance can be used to determine responsibility and as an evaluation factor - THE INTENT MUST BE CLEAR!

**Responsibility
or
Evaluation Factor ?**



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The FAR directs the contracting officer to consider relevant past performance information when making a determination of responsibility. In this capacity it is used to help determine whether or not a contractor has the ability to perform the contract. As such, it will be subject to review by the Small Business Administration under the Certificate of Competency process.

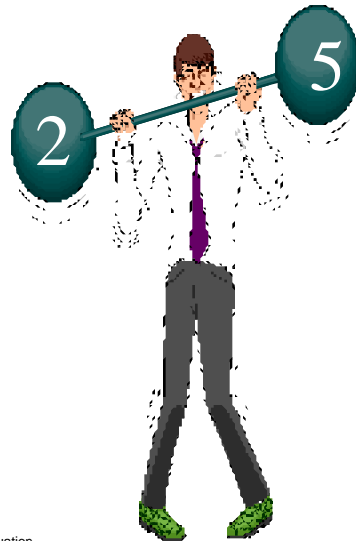
However, the FAR goes on to say that a prospective contractor shall not be determined responsible or non-responsible solely on the basis of the lack of relevant past performance history. The FAR also requires that past performance be an evaluation factor in competitively negotiated solicitations above \$100,000. In this case, it is used in a comparative format to indicate how well a contractor performs, and its relevance is measured and rated in some way.

When using past performance as an evaluation factor, the intent must be clear. This is accomplished by including past performance in the solicitation language concerning evaluation factors. Clearly, the Government wants to deal with proven performers.

(9.105-1), (9.104-1), (15.605)

Primary Non-Cost Evaluation Factor

- **Mandatory Factor**
- **As Significant as Price/Cost or Technical**
- **OFPP Suggests 25% or More**



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As mentioned on the last slide, past performance is now a primary non-cost evaluation factor. The intent of the FAR is to make past performance as important as price/cost, technical, and any other comparative factor.

OFPP suggests the way to do this is to consider past performance as a stand-alone factor, rather than integrate it with other non-cost factors. Further, it should be at least equal in significance to any other non-cost evaluation factor.

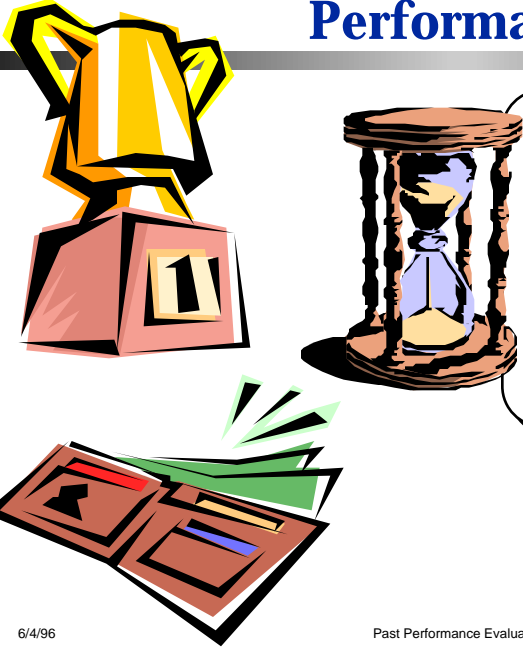
If a numeric weighting system is used, OFPP suggests that past performance should be rated at 25 percent or more. When used as an evaluation factor, past performance, like any other factor, must be used to elicit information that will enable the government to decide how good the offeror's promises are in comparison to all others.

NOTE: DoD proposes to use past performance as a price-related factor when delays due to performance problems can be reduced to costs. The methodology and weight must be included in the solicitation.

(Federal Register, November 17, 1995)

FAR (15.605, OFPP)

General Indicators of Past Performance



- Quality of product or service
- Timeliness
- Cost Control

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Prior to acquiring and using past performance information, it is helpful to know what some of the general indicators of past performance are and how they are measured:

- Quality of product or service can be looked at in terms of how well the contractor has complied with contract requirements and whether it conformed to standards of good workmanship.
- Timeliness of performance can be measured in terms of how well the contractor adhered to contract schedules and its responsiveness to technical direction.
- Cost control can be evaluated by examining to see if the contractor, among other things, operated at or below budget, submitted reasonably priced change proposals, or provided current, accurate, and complete billings.

More Indicators of Past Performance

Business Practices

Customer Satisfaction

Key Personnel

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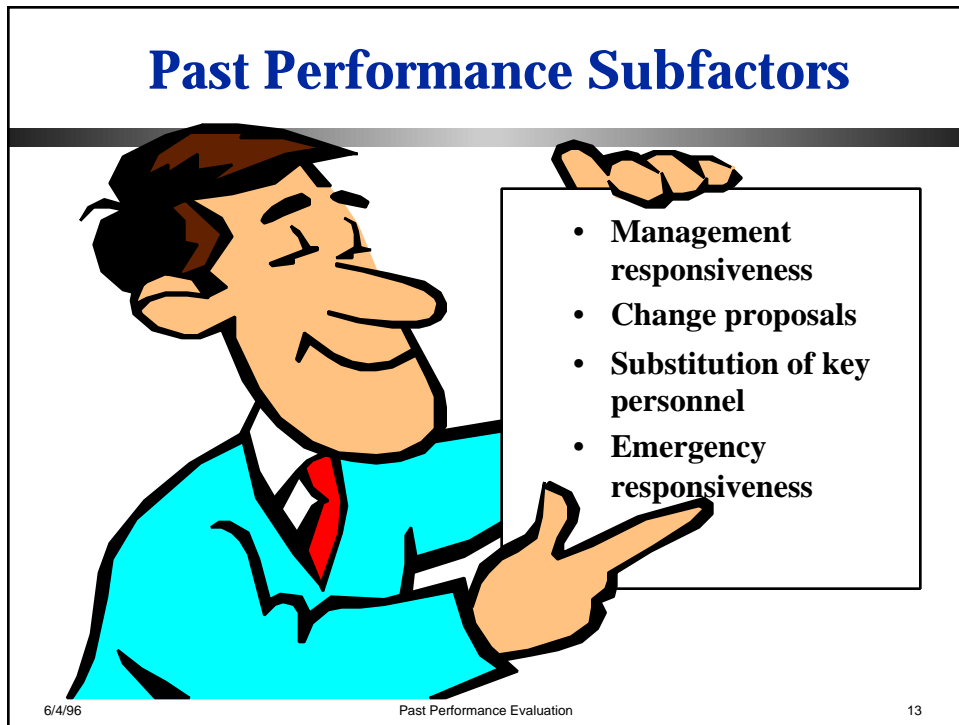
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Business practices indicate how well the contractor worked with the contracting officer and technical representatives. Customer satisfaction measures the interface with the ultimate end user of the product or service. A contract cannot be considered a success unless the customer is satisfied.

Key personnel past performance looks at the track record of the principal individuals selected to manage and perform other key aspects of the work on the contract. For new companies or those without relevant company experience, the past performance of their key management personnel may be the best indicator future performance .

These are some of the better known indicators of past performance. There can be many others, depending on the item or service being purchased and the particular circumstances of the buy.

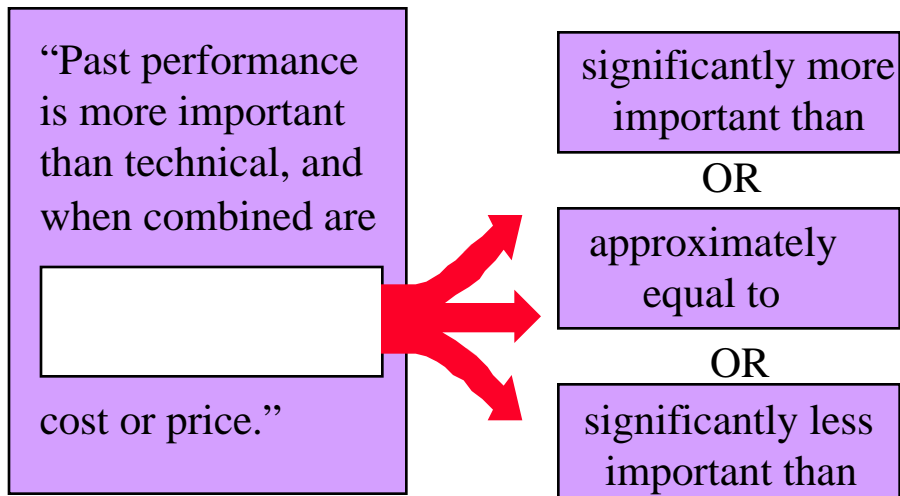


Subfactors used for past performance should be those contractor actions that can reasonably be asked of a reference and can be measured. They can be the basis for questions on a questionnaire to use for interviewing references or reviewing written evaluations provided by references.

For example, subfactors under business relations could include:

- Management responsiveness - Is the offeror cooperative, business-like and concerned with his customer?
- Change proposals - What is the contractor's history on contract change proposals?
- Substitution of key personnel - What is the contractor's history on changing key personnel from contract to contract?
- Emergency responsiveness - Has the offeror responded in a credible manner to emergency service requirements?

Establishing Relative Importance



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As with any other evaluation factor, the relative importance of past performance to other factors must be determined.

The FAR requires that the solicitation state "whether all evaluation factors other than cost or price, when combined are significantly more important than; approximately equal to; or significantly less important than cost or price".

Beyond that, the relationship of past performance to other non-price factors is a subjective contracting officer call and depends on the particular circumstances of each buy.

Regardless of the other non-price factors, past performance must be a factor in most competitively negotiated buys, as illustrated earlier.

(15.605)

SELECT A RATING METHOD

| CONTRACTOR TYPE | A | B | C |
|--------------------|------|--------|--------|
| ADJECTIVAL | HIGH | MEDIUM | LOW |
| COLOR | BLUE | GREEN | YELLOW |
| NUMERIC | 92 | 81 | 72 |

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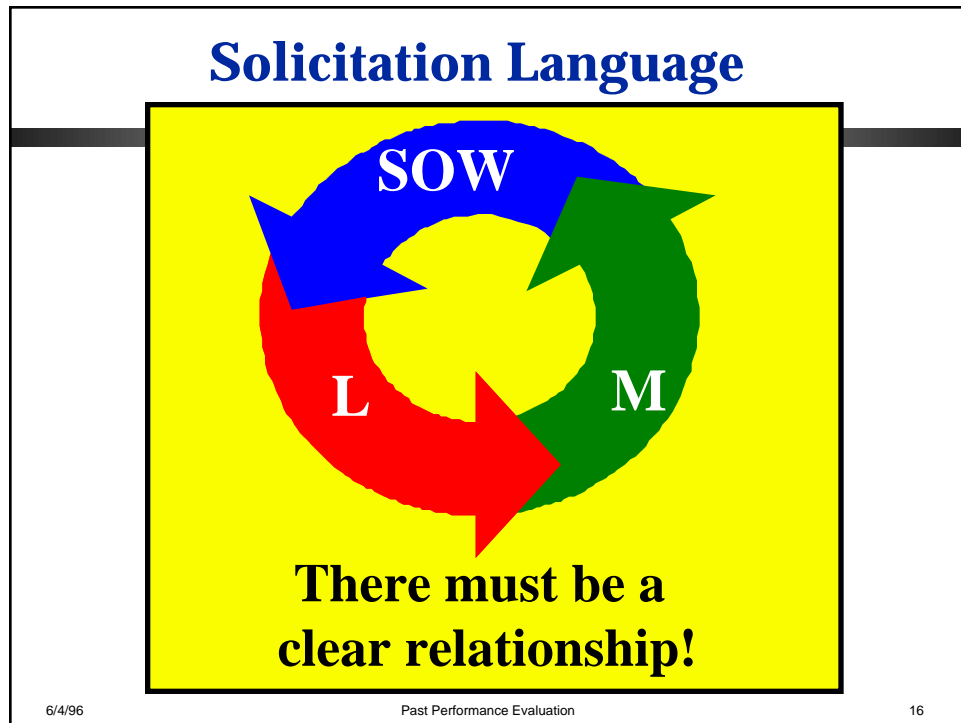
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Once the factors have been selected and their relative importance has been determined, a rating method should be selected to show how the factors relate to corresponding evaluation standards.

The common rating methods are adjectival, color and numeric.

The method chosen is up to the individual agency.



Once the factors and subfactors have been chosen and the relationship between factors is established, this information has to be placed into the solicitation.

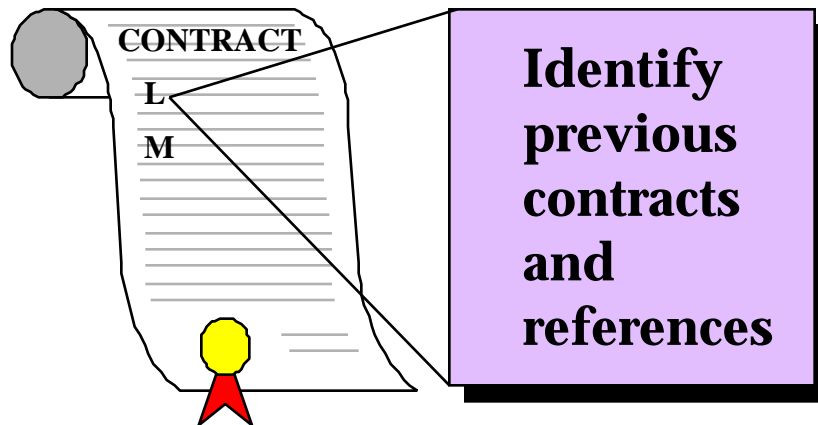
Key to the successful use of past performance and any other factor is a clear relationship between the Statement of Work (SOW), Section L and Section M.

Accordingly, Sections L and M should be clear with respect to what past performance information the Government will evaluate and how it will be weighted (in relative terms).

(If this is a contract for a commercial item, the appropriate language should show up in the provisions.)

Clear statements in the SOW will help promote understanding on the contractor's part. The better a contractor understands what the Government wants, the more apt he is to submit a responsible, responsive proposal.

Section L Language



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Section L must state that the offerors may identify Federal, state and local government and private contracts that are similar to the statement of work in the solicitation. This helps contractors new to the federal acquisition process.

It should ask only for a list of contracts and contact points, and a description of any quality awards earned by the contractor.

It should ask the contractor for references for ongoing or contracts completed within the last three years **(42.1503)**. This may be shorter period for an item with lots of actions. Two references per contract should be identified.

Section L should also state that the Government may use information obtained from other than the sources identified by the contractor. When subcontractors perform significant parts of the effort, their past performance will also be evaluated.

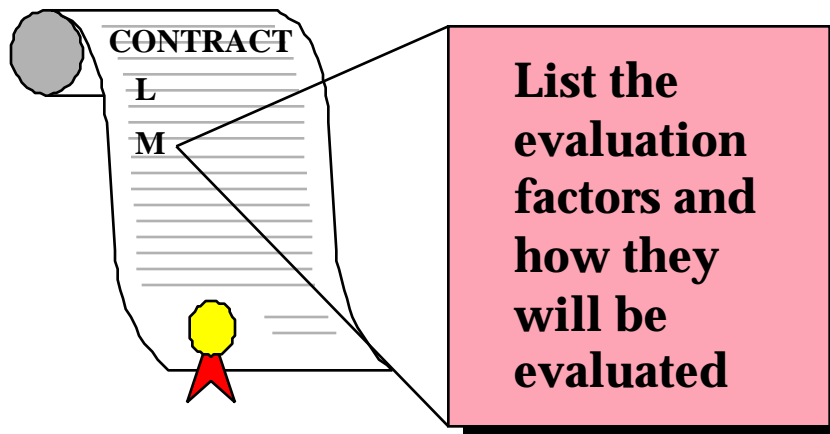
It is recommended that a copy of the questionnaire used to get data from references be included in Section J - Attachments, and Section L should note that it will be used to collect data. This allows offerors to see what is important to the Government.

(If the contract is for commercial items - use appropriate provisions.)

The idea is to give the contractor every opportunity possible to provide relevant past performance data.

(15.608 (a)(2)(ii))

Section M Language



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Past Performance Evaluation

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The evaluation factors and subfactors, including past performance and the way they will be evaluated, are listed in Section M. The relationship of past performance (weighting) to other factors is also listed here.

It is also important to indicate that firms that lack relevant past performance history shall receive a neutral evaluation.

There should be no mystery as to what the evaluation factors are and how the Government plans to evaluate those factors.

(If the contract is for commercial items - use appropriate provisions.)

Again, a clear statement of Government intentions here promotes contractor understanding and should lead to better proposals.

Obtaining Past Performance Data

- **References**
- **Evaluations of previous contracts**
- **Quality awards and certifications**
- **Other data bases**



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Past Performance Evaluation

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Information about a contractor's past performance can come from a variety of sources.

Reference checks are accomplished by developing a questionnaire that reflects the evaluation rating system that will be used to evaluate offerors using face-to-face interviews, responses returned by mail, telephone interviews, or some combination of these techniques. Large numbers of references should be surveyed to seek out trends.

Contractor Performance Evaluations on previous contracts are obtained from agency files or other federal agencies. Sources will grow as the collection effort grows.

Quality certifications are an excellent source of data. Highly prized private sector awards include the Deming Quality Award, Ford's Q1 certification, Xerox certification, Honda certification, the Baldrige Award, the President's Quality Award and the ISO 9000 certification efforts.

There are reams of performance data available on numerous agency data bases. Within DoD, for example, there are significant amounts of contractor performance data found on Defense Logistics Agency (DLA) and Defense Contract Audit Agency (DCAA) data bases.

Finally, performance data can be collected from nongovernment sources such as state and local government offices.

Evaluation of Past Performance

★ **Evaluate according to
evaluation plan**

★ **Use rating method**

★ **Do not penalize firms
lacking experience**

★ **Evaluate subs if
required**



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Past Performance Evaluation

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Once all the data has been assembled, past performance is evaluated based on the methodology spelled out in the solicitation.

Past performance may be rated overall (as a single factor) or there may be several subfactors with different weights. The more important the factor or subfactor, the more weight.

Ratings are not precise; they are necessarily subjective. There should be, however, sufficient documentation to support the rating.

Firms lacking relevant performance history are not penalized. In fact, firms without experience may have key personnel with some relevant experience. The solicitation should allow the firm to submit this information.

If subcontractors perform a significant portion of the contract, their performance will also be evaluated.

Whenever feasible, awards are made without discussions.

Discussions

OK to discuss
“new” references

BUT

Properly completed Federal
contractor evaluations are not
discussion items.



“It wasn’t my fault!”



“Case Closed”

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Past Performance Evaluation

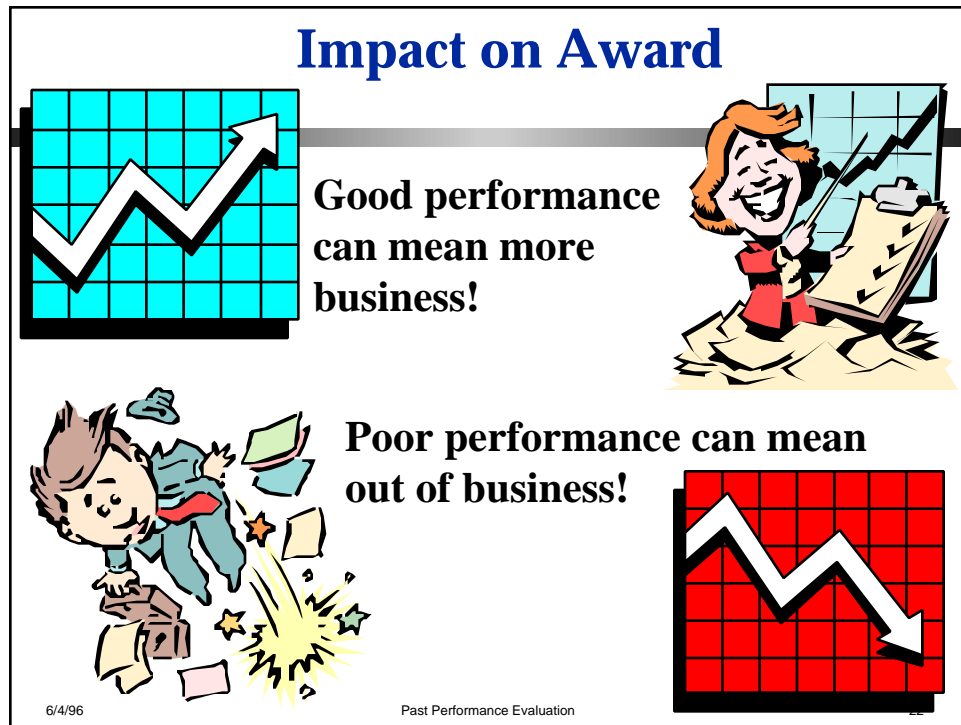
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If discussions are conducted, offerors must be provided an opportunity to discuss past performance information obtained from references on which the offeror has not had an opportunity to comment. These are normally state, local and private sector references.

Contractor input should be added to the past performance information and considered during evaluation.

Alternatively, contractor evaluations on previous Federal Government contracts, properly completed IAW FAR Part 42, are not subject to additional discussion or revision (as part of the process, contractor’s are given a chance to comment on the rating before finalization of the evaluation).

The best way for a contractor to overcome negative ratings is to achieve positive ratings on subsequent contracts.



The Government would like to routinely secure the high level of quality demanded by contractors in the commercial world. Making past performance an essential consideration in the award of contracts will allow contracting officers to deal with those proven performers that can provide high quality deliverables. This, in turn, reduces risk and the requirement for oversight.

Contractors know that good performance means good performance history which means more business opportunities. History of poor performance will make it difficult to get further contracts.

The Government may pay a higher price for goods and services (best value), but that differential will be more than offset in quality products and customer satisfaction.

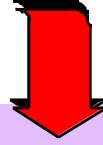
In the past, offerors that could write outstanding proposals could win an award, even though they had problems performing. And, going with a low offeror was no guarantee of customer satisfaction. Too often at contract end, the Government is left with inexpensive mediocrity or failure to perform. The latter is ultimately more costly than going with a proven performer at a higher price.

During the debriefing process, names of past performance references will not be revealed.

(15.1003)

Recording of Past Performance Information

Past performance is...



- **Contractor's record of**
 - **conforming to contract requirements**
 - **forecasting and controlling costs**
 - **adherence to schedules**
 - **reasonable and cooperative behavior**
 - **commitment to customer satisfaction**
 - **business-like concern for customer**

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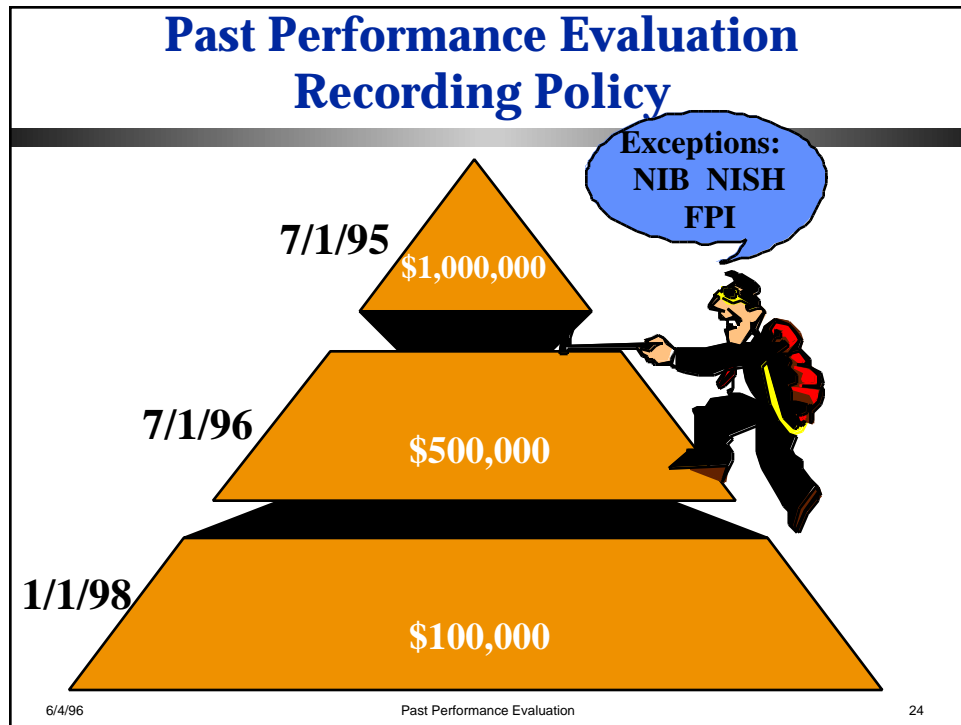
Past Performance Evaluation

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We have seen how past performance information is used in the evaluation process. Now we will investigate how past performance information is recorded.

First, we need to understand exactly what past performance information is. It is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes record of conforming to contract requirements and to standards of good workmanship such as:

- A record of forecasting and controlling costs.
- An adherence to contract schedules.
- A history of reasonable and cooperative behavior.
- A commitment to customer satisfaction.
- A business-like concern for the customer.



Agencies shall evaluate contractor performance for each contract...

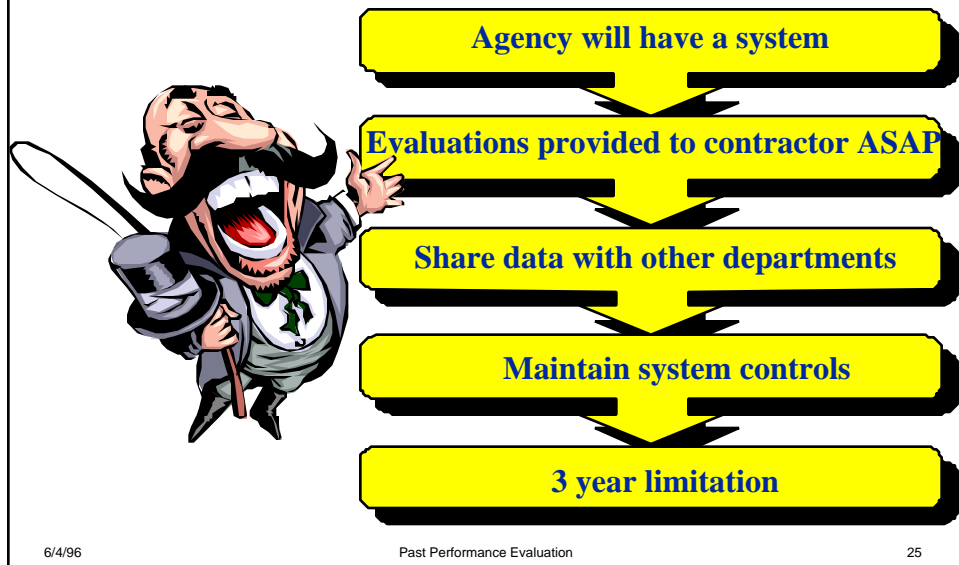
- In excess of \$1 million beginning July 1, 1995.
- In excess of \$500,000 beginning July 1, 1996.
- In excess of \$100,000 beginning January 1, 1998.

Exceptions are contracts awarded under FAR Subparts 8.6 and 8.7 (NIB, NISH, FPI). Construction and A & E contractors are evaluated IAW FAR Part 36.

While this may initially be an administrative burden, the benefits of this recording effort will become apparent downstream as the information is used to highlight good performers.

NOTE: DoD wants to accelerate this effort - Contractor performance evaluations will be prepared for all contracts in excess of \$100,000 effective July 1, 1996. (Proposed in the Federal Register, November 17, 1995.)

General Procedures



The general procedures for recording and sharing of past performance information are stated at FAR 42.1503. They are:

- The agency shall have a system.
- Evaluations shall be provided to the contractors ASAP.
- Contractors have 30 days to comment.
- Data is classified "source selection information".
- Agencies shall share information with other agencies.
- System will have appropriate controls.
- Data shall not be retained for longer than three years.

(42.1503)

Contractor Performance Report

- Agency responsibility to develop form
- Currently 12 different PPI systems
- OFPP encourages development of uniform government-wide format
- OFPP form (handout)



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Past Performance Evaluation

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Each agency must develop a cost effective way to record and disseminate contractor performance information in accordance with the phase-in schedule.

Currently there are at least 12 systems in use by various agencies. Those that meet the requirements of FAR (**42.15**) may be used at agency discretion.

OFPP encourages the voluntary development of a uniform government-wide format. The Contractor Report Form, which has been distributed to you, is one possible approach.

If an agency has better ideas, it is encouraged to use them.

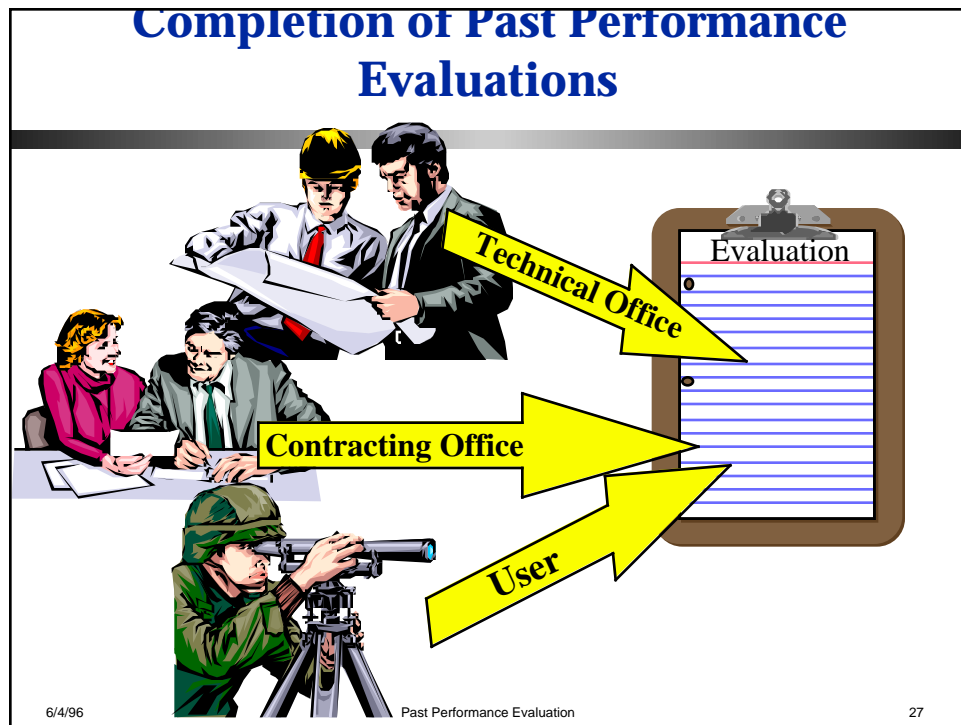
The key is to make the evaluations fit the type of information needed for use in the source selection for the type and complexity of the contract.

SF1420 should be used for construction.

SF1421 should be used for A&E.

The way core data is evaluated should be uniform in order to make information exchanges between agencies meaningful.

NOTE: The DoD-wide format under development will be automation-systems friendly. The system is described in proposed DFARS Rule, Federal Register, November 17, 1995.



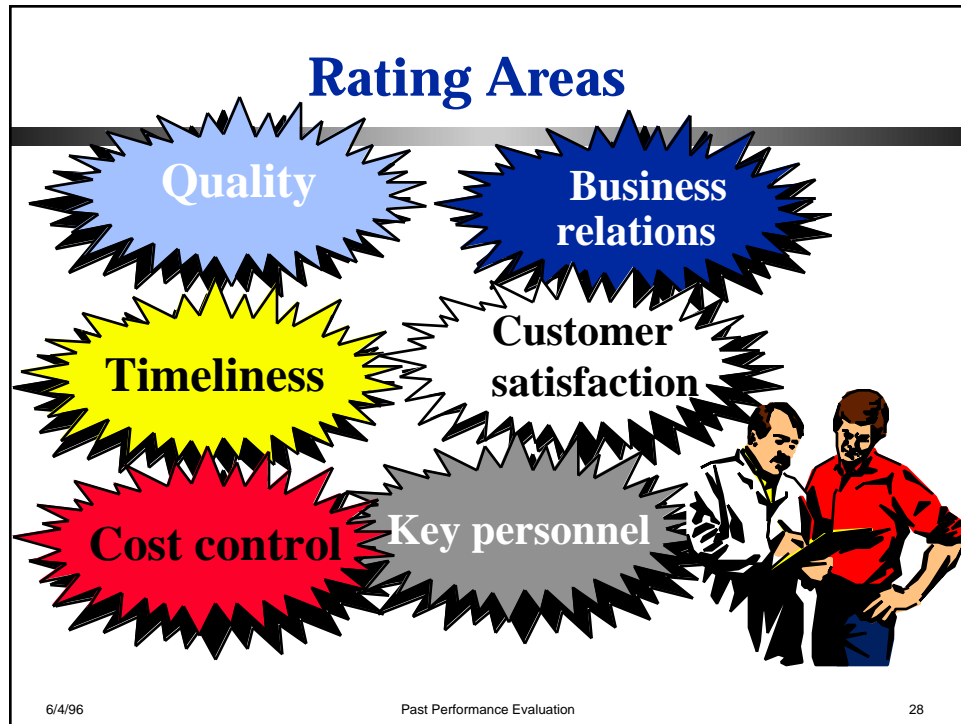
The development of the performance evaluation is a combined responsibility of the contracting officer (in DoD, if delegated for administration, the ACO), the technical representative and the user or customer.

In the case of a computer system, for example, a survey should be made of all customers, and a summarization generated.

The evaluation is required at the time the work is completed.

Interim evaluations should be prepared on contracts with periods of performance (including options) exceeding one year.

Interim evaluations provide valuable feedback to the contractor, who can correct problems prior to contract completion.



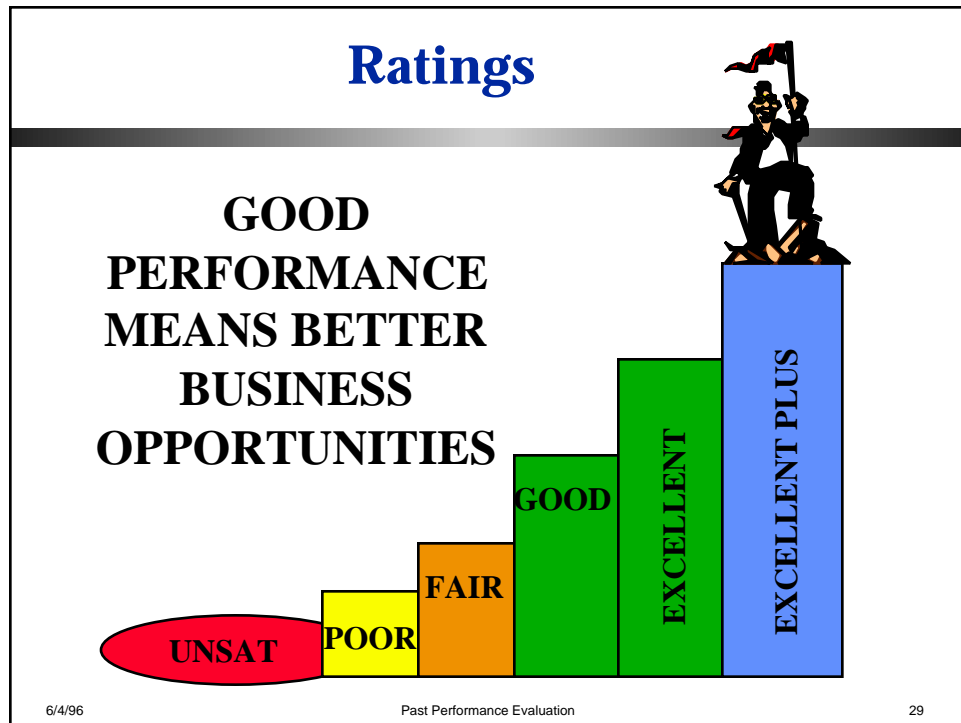
The sample Contractor Performance Report sets out six common areas. They are the common performance indicators for commercial items. Others may be used depending on the circumstances of the buy.

Comments are summaries of past performance information and should be brief, to-the-point and provide answers to questions that may be of interest to source selection personnel.

Positive and adverse information should be backed up by appropriate documentation.

Areas and sample comments are are:

- Quality - "deliverable items exceeded quality standards".
- Timeliness - "all scheduled delivery times were met".
- Cost control - "cost management excellent - 2 percent underrun".
- Business relations - "not responsive to changes procedures".
- Customer satisfaction - "survey showed over 95 percent customer satisfaction".
- Key personnel - "key personnel remained on the project until contract completion".

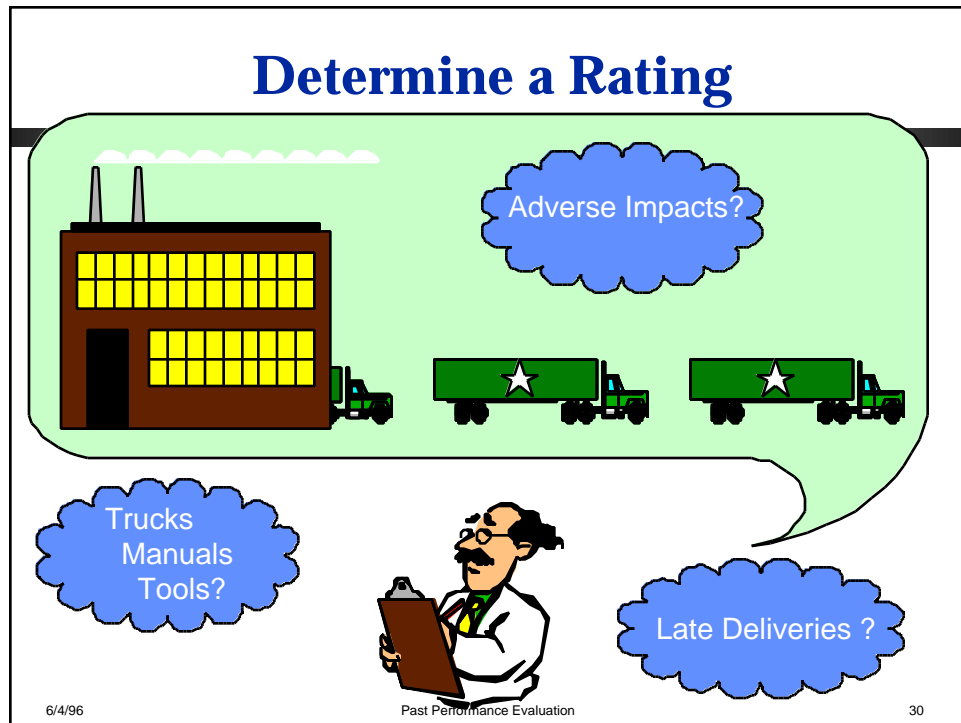


The sample Contractor Performance Report suggests that each rating area be assigned one of six ratings. Agencies may develop their own.

| <u>Rating</u> | <u>Sample Statement</u> |
|----------------|---|
| Unsatisfactory | Nonconformance; control problems compromised contract completion. |
| Poor | Responses to administrative requirements were marginally effective. |
| Fair | Excessive work-arounds required to meet schedule. |
| Good | Approach to service and technical issues were timely and adequate. |
| Excellent | No quality, cost control or administrative problems. |
| Excellent plus | Mobilized for surge requirement in half the required time. |

Excellent plus, or its equivalent, should be reserved for truly exceptional actions.

Contractors should be rated fairly, with no inflation. Inflated ratings lead to inaccurate data in the system and potential contract problems downstream.



At this point, let's look at how a rating is generated. Please turn to the handout "The Truck Case" and read the scenario.

Your task is to generate brief comments to insert into Block 7, Timeliness of Performance on the Contractor Evaluation Form. You will then suggest a numeric rating.

Instructor: Review suggested solution, emphasize teaching points:

- Comments should reflect accurate portrayal of contractor performance.
- Rating should be based on established standards.
- Very positive or adverse data should be backed up by adequate documentation.
- Rating becomes past performance data for future source selections.

Contractor Response/ Agency Review



- **Contractor has 30 days to respond to rating**
- **If issue unresolved, agency review - one level above contracting officer**
- **Contractor statement, agency review become part of evaluation.**

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While the ultimate conclusion of the performance evaluation process is the decision of the contracting agency, the FAR does provide for contractor comment.

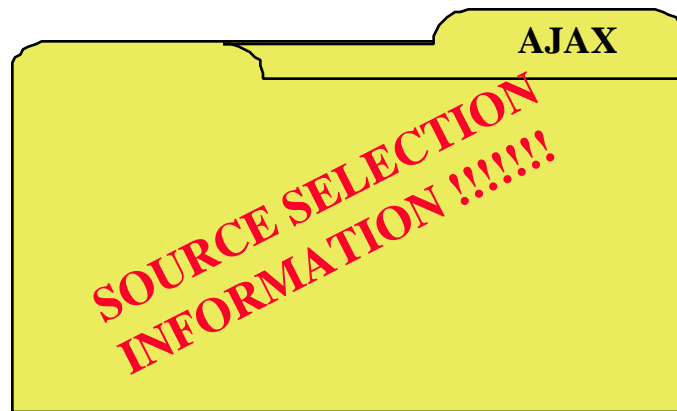
Upon completion, the evaluation is sent to the contractor for comment. The response should be back within 30 days. Failure to respond in a timely fashion means that the Government comments stand alone.

If the contractor rebuts the evaluation, and he and the contracting officer cannot resolve the issue, it is reviewed at the agency at least one level above the contracting officer.

The decision is in writing and is given to the contractor within 15 days (OFPP).

The contractor's statement and the agency review are attached to the performance evaluation, and the package becomes a part of the data base. The data base should be made available upon request from other authorized users. The information should not be maintained longer than three years.

Release of Information



HANDLE WITH CARE

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Past Performance Evaluation

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Contractor evaluations may be used to support future award decisions; therefore, they are marked "source selection information".

They should not be released to other than authorized government personnel and the contractor concerned.

Disclosure of this data could cause harm to both the commercial interest of the Government and to the competitive position of the contractor being evaluated.

It could also impede government operations.

(42.1503)

Summary



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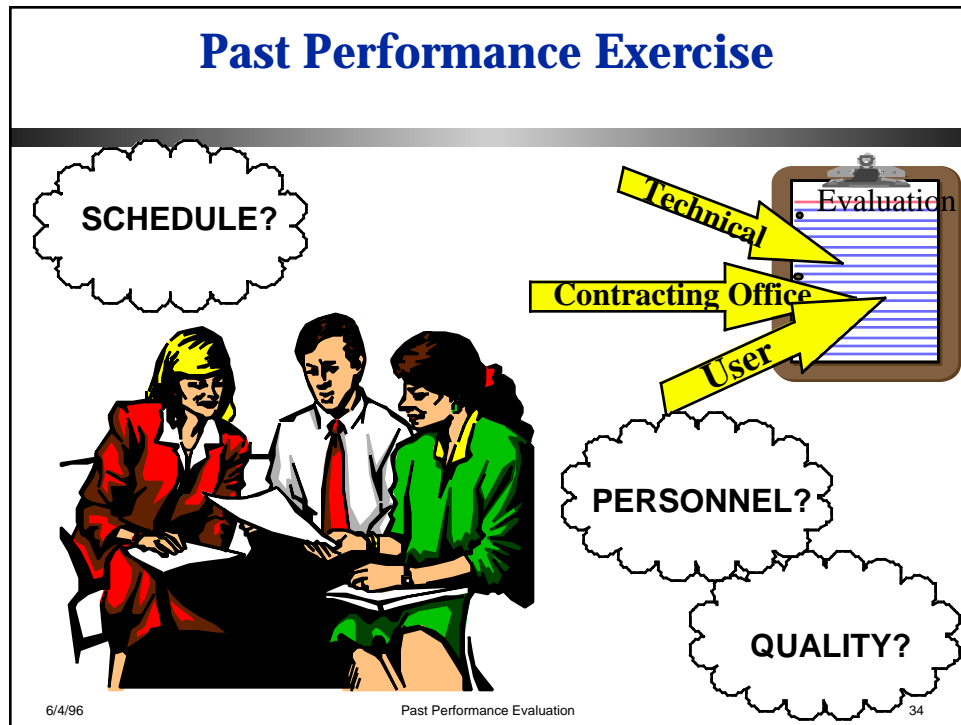
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The use of past performance in the source selection process is one aspect of the principle that government contracting officers should procure goods and services with best value techniques.

It enables agencies to better predict the quality of future work and it provides contractors with a powerful incentive to strive for excellence.

The Government attains the benefits of favored customers; the contractor increases his business opportunities.



Now, let's put this instruction to practical use.

The purpose of the exercise is to reinforce the learning objectives mentioned at the beginning of the lecture.

We will break up into work groups. Acting in the capacity of a contracting officer for the R-21 Refueler, each group will work through scenarios to:

- Identify contractor opportunities to comment on past performance evaluations.
- Decide whether past performance is an evaluation factor or used to determine responsibility.
- Evaluate past performance data and assign it a rating.
- Rate contractor performance.

Practical Exercise Briefing Template

| Task 1 | Evaluation | | | | | | | | | | |
|------------------|---|---------|--|---------|--------|------------------|--|--|--|--|--|
| | Responsibility Factor | Remarks | | | | | | | | | |
| | Hand tools | | | | | | | | | | |
| | Roads & Grounds | | | | | | | | | | |
| | Environmental Impact | | | | | | | | | | |
| | Study | | | | | | | | | | |
| | Bus stop shelters | | | | | | | | | | |
| Task 2a | | | | | | | | | | | |
| Task 2b | | | | | | | | | | | |
| Task 3 | <table border="1"> <thead> <tr> <th></th> <th>GOVETCH</th> <th>B'GOSH</th> </tr> </thead> <tbody> <tr> <td>Past Performance</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table> | | | GOVETCH | B'GOSH | Past Performance | | | | | |
| | GOVETCH | B'GOSH | | | | | | | | | |
| Past Performance | | | | | | | | | | | |
| | | | | | | | | | | | |
| Task 4 | Fill in Block 7 of the Contractor Performance Evaluation Form | | | | | | | | | | |

6/4/96 Past Performance Evaluation 35

Suggested timeline:

- Task 1 25 minutes
- Task 2 25 minutes
- Task 3 40 minutes
- Task 4 30 minutes

We will then return to plenary session, where work groups will brief solutions. The school solution will be discussed for the last 30 minutes of this session.

The briefing format is shown on this slide:

- Task 1 Fill in the blanks
- Tasks 2a and 2b Answer in space provided
- Task 3 Fill in the blanks
- Task 4 Note that you must fill in Block 7 of your Contractor Evaluation Form.